



State of Wisconsin  
2005 - 2006 LEGISLATURE

TODAY

LRB-0303/1 <sup>2</sup>  
JK:jld:pg

Rm not R

DOA:.....Justus, BB0070 - Streamlined sales and use tax provisions

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

in 1-24-05

LPS - percentage  
changes may  
already appear  
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- 1 AN ACT ...; relating to: the Uniform Sales and Use Tax Administration Act,  
2 granting rule-making authority, making an appropriation, and providing a  
3 penalty.

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*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

This bill adopts the substantive provisions of the streamlined sales and use tax agreement (agreement) for purposes of administering and collecting state, county, and stadium district sales and use taxes. The agreement is intended to simplify and modernize sales and use tax administration for the states that enter into the agreement and to encourage out-of-state retailers to collect the state, county, and stadium district sales and use taxes voluntarily. Under current federal law, generally, an out-of-state retailer who sells goods or services to customers in this state is not required to collect the sales tax or use tax imposed on such sales, if the retailer has no physical presence in this state. See *Quill v. North Dakota*, 504 U.S. 298; 112 S.Ct. 1904 (1992).

States that wish to enter into the agreement must adopt uniform definitions related to the administration of sales and use taxes and uniform policies related to sourcing sales of goods and services, bad debt allowances, refunds, and, to some extent, exemptions. Under the agreement, DOR may act jointly with other states

that are signatories to the agreement to establish standards for certifying service providers and automated systems to aid out-of-state retailers with the collection of state sales and use taxes.

Under current law, “gross receipts” refers to the measure of the sales tax, and “sales price” refers to the measure of the use tax. Under the bill, “sales price” refers to the measure of the sales tax, and “purchase price” refers to the measure of the use tax.

The bill creates definitions for “alcohol beverages,” “candy,” “delivery charges,” “dietary supplement,” “food and food ingredients,” “prepared food,” and “soft drink.”

The agreement provides that a state that is a signatory to the agreement may choose to tax or not tax all articles that are covered by one definition, but a state may not exempt from sales tax or use tax a particular item that is included in a definition. The members of the project working on the agreement approved a definition for “clothing.” Therefore, in order to comply with the agreement, a state may either tax all clothing or exempt all clothing, but a state may not exempt certain items of clothing and tax others. This bill, therefore, eliminates the sales tax and use tax exemptions for cloth diapers and antiembolism hose.

This bill creates definitions for “durable medical equipment,” “mobility-enhancing equipment,” and “prosthetic device.” Under the bill, the sale of such equipment and devices is exempt from the sales tax and the use tax.

Under the bill, generally, for purposes of determining which jurisdiction may impose a sales tax or use tax on a sale, if a purchaser receives a product at the seller’s business location, the sale of that product occurs at the seller’s business location. If a purchaser does not receive the product at a seller’s business location, the sale occurs at the location where the purchaser receives the product. If the location of the sale cannot be so determined, the sale occurs at the purchaser’s address, as indicated by the seller’s business records. If the address cannot be determined from the business records, the sale occurs at the purchaser’s address, as obtained during the consummation of the sale, including the address indicated on the purchaser’s check. Finally, if the location of a sale cannot be determined in any other way, the sale of tangible personal property occurs at the location from which the tangible personal property is shipped. Under the bill, if the item sold is a digital good or computer software, and the digital good or computer software is delivered electronically, the sale occurs at the location from which the digital good or computer software was first available for transmission by the seller.

Under the bill, generally, the sale of a telecommunications service occurs at a location that is determined to be consistent with the provisions of the federal Mobile Telecommunications Sourcing Act.

This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1       **SECTION 1.** 20.435 (3) (bm) of the statutes is repealed.

      \*\*\*NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

2       **SECTION 2.** 46.513 of the statutes is repealed.

3       **SECTION 3.** 66.0615 (1m) (f) 2. of the statutes is amended to read:

4       66.0615 **(1m)** (f) 2. Sections 77.51 (12m), (14) (~~e~~), (~~f~~) and (~~j~~) and, (14g), (15a),  
5       and (15b), 77.52 (3), (3m), (4), (~~6~~) and (13), (14), (18), and (19), 77.522, 77.58 (1) to (5),  
6       (6m), and (7), 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (8), (9) and, (12) to (14), and  
7       (15), and 77.62, as they apply to the taxes under subch. III of ch. 77, apply to the tax  
8       described under subd. 1.

9       **SECTION 4.** 70.111 (23) of the statutes is amended to read:

10       70.111 **(23)** VENDING MACHINES. All machines that automatically dispense soda  
11       water beverages, as defined in s. ~~97.29 (1) (i)~~, and items included as a food or beverage  
12       under s. ~~77.54 (20) (a) and (b)~~ food and food ingredient, as defined in s. 77.51 (3t),  
13       upon the deposit in the machines of specified coins or currency, or insertion of a credit  
14       card, in payment for the ~~soda water beverages, food or beverages~~ food and food  
15       ingredient, as defined in s. 77.51 (3t).

16       **SECTION 5.** 73.03 (50) (d) of the statutes is amended to read:

17       73.03 **(50)** (d) In the case of a sole proprietor, signs the form or, in the case of  
18       other persons, has an individual who is authorized to act on behalf of the person sign  
19       the form, or, in the case of a single-owner entity that is disregarded as a separate  
20       entity under section 7701 of the Internal Revenue Code, the person is the owner. Any

1 person who may register under this subsection may designate an agent, as defined  
2 in s. 77.524 (1) (ag), to register with the department under this subsection in the  
3 manner prescribed by the department. In this paragraph, “sign” has the meaning  
4 given in s. 77.51 (17r).

5 **SECTION 6.** 73.03 (50b) of the statutes is created to read:

6 73.03 **(50b)** To waive the fee established under sub. (50) for applying for and  
7 renewing the business tax registration certificate, if the person who is applying for  
8 or renewing the certificate is not required for purposes of ch. 77 to hold such a  
9 certificate.

10 **SECTION 7.** 73.03 (61) of the statutes is created to read:

11 73.03 **(61)** To do all of the following related to the Uniform Sales and Use Tax  
12 Administration Act:

13 (a) Certify compliance with the agreement, as defined in s. 77.65 (2) (a).

14 (b) Pursuant to the agreement, as defined in s. 77.65 (2) (a), certify certified  
15 service providers, as defined in s. 77.51 (1g), and certified automated systems, as  
16 defined in s. 77.524 (1) (am).

17 (c) Consistent with the agreement, as defined in s. 77.65 (2) (a), establish  
18 performance standards and eligibility criteria for a seller that sells tangible personal  
19 property or taxable services in at least 5 states that are signatories to the agreement,  
20 as defined in s. 77.65 (2) (a); that has total annual sales revenue of at least  
21 \$500,000,000; that has a proprietary system that calculates the amount of tax owed  
22 to each taxing jurisdiction in which the seller sells tangible personal property or  
23 taxable services; and that has entered into a performance agreement with the states  
24 that are signatories to the agreement, as defined in s. 77.65 (2) (a). For purposes of  
25 this paragraph, “seller” includes an affiliated group of sellers using the same

1       proprietary system to calculate the amount of tax owed in each taxing jurisdiction  
2       in which the sellers sell tangible personal property or taxable services.

3           (d) Issue a tax identification number to a person who claims an exemption  
4       under subch. III or V of ch. 77 and who is not required to register with the department  
5       for the purposes of subch. III or V of ch. 77 and establish procedures for the  
6       registration of such a person.

7           (e) Maintain a database that is accessible to sellers and certified service  
8       providers, as defined in s. 77.51 (1g), that indicates whether items defined in  
9       accordance with the Uniform Sales and Use Tax Administration Act are taxable or  
10      nontaxable.

11          (f) Maintain a database that is accessible to sellers and certified service  
12      providers, as defined in s. 77.51 (1g), that indicates tax rates, taxing jurisdiction  
13      boundaries, and zip code or address assignments related to the administration of  
14      taxes imposed under subchs. III and V of ch. 77.

15          (g) Set forth the information that the seller shall provide to the department for  
16      tax exemptions claimed by purchasers and establish the manner in which a seller  
17      shall provide such information to the department.

18          (h) Provide monetary allowances, in addition to the retailer's discount provided  
19      under s. 77.61 (4) (c), to certified service providers, as defined in s. 77.51 (1g), and  
20      sellers that use certified automated systems, as defined in s. 77.524 (1) (am), or  
21      proprietary systems, pursuant to the agreement as defined in s. 77.65 (2) (a).

22           **SECTION 8.** 76.07 (4g) (b) 8. of the statutes is amended to read:

23           76.07 (4g) (b) 8. Determine transport-related revenue by adding public service  
24      revenue allocated to this state on the basis of routes for which the company is  
25      authorized to receive subsidy payments, mutual aid allocated to this state on the

1 basis of the ratio of transport revenues allocated to this state to transport revenues  
2 everywhere in the previous year, in-flight sales allocated to this state as they are  
3 allocated under s. ~~77.51(14r)~~ 77.522 and all other transport-related revenues from  
4 sales made in this state.

5 **SECTION 9.** 77.51 (1) of the statutes is renumbered 77.51 (1d).

6 **SECTION 10.** 77.51 (1b) of the statutes is created to read:

7 77.51 (1b) “Alcohol beverage” means a beverage that is suitable for human  
8 consumption and that contains 0.5 percent<sup>✓</sup> or more of alcohol by volume.

9 **SECTION 11.** 77.51 (1e) of the statutes is created to read:

10 77.51 (1e) “Candy” means a preparation of sugar, honey, or other natural or  
11 artificial sweetener combined with chocolate, fruit, nuts, or other ingredients or  
12 flavorings in the form of bars, drops, or pieces. “Candy” does not include a  
13 preparation that contains flour or that requires refrigeration.

14 **SECTION 12.** 77.51 (1n) of the statutes is created to read:

15 77.51 (1n) “Computer” means an electronic device that accepts information in  
16 digital or similar form and that manipulates such information to achieve a result  
17 based on a sequence of instructions.

18 **SECTION 13.** 77.51 (1p) of the statutes is created to read:

19 77.51 (1p) “Computer software” means a set of coded instructions designed to  
20 cause a computer or automatic data processing equipment to perform a task.

21 **SECTION 14.** 77.51 (2k) of the statutes is created to read:

22 77.51 (2k) “Delivered electronically” means delivered to a purchaser by means  
23 other than by tangible storage media.

24 **SECTION 15.** 77.51 (2m) of the statutes is created to read:

1           77.51 (2m) “Delivery charges” means charges by a seller to prepare and deliver  
2           tangible personal property or services to a location designated by the purchaser of  
3           the tangible personal property or services, including charges for transportation,  
4           shipping, postage, handling, crating, and packing.

5           **SECTION 16.** 77.51 (3p) of the statutes is created to read:

6           77.51 (3p) “Dietary supplement” means a product, other than tobacco, that is  
7           intended to supplement a person’s diet, if all of the following apply:

8           (a) The product contains any of the following ingredients or any combination  
9           of any of the following ingredients:

- 10           1. A vitamin.
- 11           2. A mineral.
- 12           3. An herb or other botanical.
- 13           4. An amino acid.
- 14           5. A dietary substance that is intended for human consumption to supplement  
15           the diet by increasing total dietary intake.
- 16           6. A concentrate, metabolite, constituent, or extract.

17           (b) The product is intended for ingestion in tablet, capsule, powder, soft-gel,  
18           gel-cap, or liquid form, or, if not intended for ingestion in such forms, is not  
19           represented as conventional food and is not represented for use as the sole item of  
20           a meal or diet.

21           (c) The product is required to be labeled as a dietary supplement as required  
22           under 21 CFR 101.36.

23           **SECTION 17.** 77.51 (3pd) of the statutes is created to read:

24           77.51 (3pd) “Direct mail” means printed material that is delivered by the U.S.  
25           postal service or other delivery service to a mass audience or to addressees on a

1 mailing list provided by or at the direction of the purchaser of the printed material,  
2 if the cost of the printed material or any tangible personal property included with the  
3 printed material is not billed directly to the recipients of the printed material.  
4 “Direct mail” includes any tangible personal property provided directly or indirectly  
5 by the purchaser of the printed material to the seller of the printed material for  
6 inclusion in any package containing printed material. “Direct mail” does not include  
7 multiple items of printed material delivered to a single address.

8 **SECTION 18.** 77.51 (3pj) of the statutes is created to read:

9 77.51 (3pj) “Drug” means a compound, substance, or preparation, or any  
10 component of them, other than food and food ingredients, dietary supplements, or  
11 alcoholic beverages, to which any of the following applies:

12 (a) It is listed in the United States Pharmacopoeia, Homeopathic  
13 Pharmacopoeia of the United States, or National Formulary, or any supplement to  
14 any of them.

15 (b) It is intended for use in diagnosing, curing, mitigating, treating, or  
16 preventing a disease.

17 (c) It is intended to affect a function or structure of the body.

18 **SECTION 19.** 77.51 (3pm) of the statutes is created to read:

19 77.51 (3pm) “Durable medical equipment” means equipment, including the  
20 repair parts and replacement parts for the equipment that is primarily and  
21 customarily used for a medical purpose related to a person; that can withstand  
22 repeated use; that is not generally useful to a person who is not ill or injured; and that  
23 is not placed in or worn on the body. “Durable medical equipment” does not include  
24 mobility-enhancing equipment.

25 **SECTION 20.** 77.51 (3pp) of the statutes is created to read:



1           77.51 (3pp) “Electronic” means relating to technology having electrical,  
2           digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

3           **SECTION 21.** 77.51 (3t) of the statutes is created to read:

4           77.51 (3t) “Food and food ingredient” means a substance in liquid,  
5           concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion, or  
6           for chewing, by humans and that is ingested or chewed for its taste or nutritional  
7           value. “Food and food ingredient” does not include alcohol beverages or tobacco.

8           **SECTION 22.** 77.51 (4) of the statutes is repealed.

9           **SECTION 23.** 77.51 (5) of the statutes is amended to read:

10          77.51 (5) For purposes of subs. (13) (e) and (f) and ~~(14)-(L)~~ (15a) and s. 77.52  
11          (2m), “incidental” means depending upon or appertaining to something else as  
12          primary; something necessary, appertaining to, or depending upon another which is  
13          termed the principal; something incidental to the main purpose of the service.  
14          Tangible personal property transferred by a service provider is incidental to the  
15          service if the purchaser’s main purpose or objective is to obtain the service rather  
16          than the property, even though the property may be necessary or essential to  
17          providing the service.

18          **SECTION 24.** 77.51 (7) of the statutes is repealed and recreated to read:

19          77.51 (7) (a) “Lease or rental” means any transfer of possession or control of  
20          tangible personal property for a fixed or indeterminate term and for consideration  
21          and includes:

- 22               1. A transfer that includes future options to purchase or extend.
- 23               2. Agreements related to the transfer of possession or control of motor vehicles
- 24          or trailers, if the amount of any consideration may be increased or decreased by

1 reference to the amount realized on the sale or other disposition of such motor  
2 vehicles or trailers, consistent with section 7701 (h) (1) of the Internal Revenue Code.

3 (b) "Lease or rental" does not include any of the following:

4 1. A transfer of possession or control of tangible personal property under a  
5 security agreement or deferred payment plan, if such agreement or plan requires  
6 transferring title to the tangible personal property after making all required  
7 payments.

8 2. A transfer of possession or control of tangible personal property under any  
9 agreement that requires transferring title to the tangible personal property after  
10 making all required payments and after paying an option price that does not exceed  
11 the greater of \$100 or 1 percent<sup>✓</sup> of the total amount of the required payments.

12 3. Providing tangible personal property along with an operator, if the operator  
13 is necessary for the tangible personal property to perform in the manner for which  
14 it is designed and if the operator does more than maintain, inspect, or set up the  
15 tangible personal property.

16 (c) 1. Transfers described under par. (a) are considered a lease or rental,  
17 regardless of whether such transfer is considered a lease or rental under generally  
18 accepted accounting principles, or any provision of federal or local law, or any other  
19 provision of state law.

20 2. Transfers described under par. (b) are not considered a lease or rental,  
21 regardless of whether such transfer is considered a lease or rental under generally  
22 accepted accounting principles, or any provision of federal or local law, or any other  
23 provision of state law.

24 **SECTION 25.** 77.51 (7m) of the statutes is created to read:

1           77.51 (7m) “Mobility-enhancing equipment” means equipment, including the  
2   repair parts and replacement parts for the equipment, that is primarily and  
3   customarily used to provide or increase the ability of a person to move from one place  
4   to another; that may be used in a home or motor vehicle; and that is generally not  
5   used by a person who has normal mobility. “Mobility-enhancing equipment” does  
6   not include a motor vehicle or any equipment on a motor vehicle that is generally  
7   provided by a motor vehicle manufacturer.

8           **SECTION 26.** 77.51 (10m) of the statutes is created to read:

9           77.51 (10m) (a) “Prepared food” means:

10          1. Food and food ingredients sold in a heated state.

11          2. Food and food ingredients heated by the retailer, except as provided in par.

12          (b).

13          3. Food and food ingredients sold with eating utensils that are provided by the  
14   retailer of the food and food ingredients, including plates, knives, forks, spoons,  
15   glasses, cups, napkins, or straws. In this subdivision, “plate” does not include a  
16   container or packaging used to transport food and food ingredients.

17          4. Except as provided in par. (b), 2 or more food ingredients mixed or combined  
18   by a retailer for sale as a single item.

19          (b) “Prepared food” under par. (a) 2. and 4. does not include:

20          1. Two or more food ingredients mixed or combined by a retailer for sale as a  
21   single item, if the retailer’s primary classification in the 1997 North American  
22   Industry Classification System, published by the federal office of management and  
23   budget, is manufacturing under sectors 31 to 33, not including bakeries and tortilla  
24   manufacturing under industry group number 3118.

1           2. Two or more food ingredients mixed or combined by a retailer for sale as a  
2           single item, sold unheated, and sold by volume or weight.

3           3. Bakery items made by a retailer, including breads, rolls, pastries, buns,  
4           biscuits, bagels, croissants, donuts, danish, cakes, tortes, pies, tarts, muffins, bars,  
5           cookies, and tortillas.

6           4. Food and food ingredients that are only sliced, repackaged, or pasteurized  
7           by a retailer.

8           5. Eggs, fish, meat, and poultry, and foods containing any of them in raw form,  
9           that require cooking by the consumer, as recommended by the food and drug  
10          administration in chapter 3, part 401.11 of its food code to prevent food-borne  
11          illnesses.

12          **SECTION 27.** 77.51 (10n) of the statutes is created to read:

13          **77.51 (10n)** “Prescription” means an order, formula, or recipe that is issued by  
14          any oral, written, electronic, or other means of transmission and by a person who is  
15          authorized by the laws of this state to issue such an order, formula, or recipe.

16          **SECTION 28.** 77.51 (10r) of the statutes is created to read:

17          **77.51 (10r)** “Prewritten computer software” means any of the following:

18          (a) Computer software that is not designed and developed by the author or  
19          creator of the software according to a specific purchaser’s specifications.

20          (b) Computer software upgrades that are not designed and developed by the  
21          author or creator of the software according to a specific purchaser’s specifications.

22          (c) Computer software that is designed and developed by the author or creator  
23          of the software according to a specific purchaser’s specifications and that is sold to  
24          another purchaser.

1 (d) Any combination of computer software under pars. (a) to (c), including any  
2 combination with any portion of such software.

3 (e) Computer software as described under pars. (a) to (d), and any portion of  
4 such software, that is modified or enhanced by any degree to a specific purchaser's  
5 specifications, except such modification or enhancement that is reasonably and  
6 separately indicated on an invoice, or other statement of the price, provided to the  
7 purchaser.

8 **SECTION 29.** 77.51 (11m) of the statutes is created to read:

9 77.51 (11m) "Prosthetic device" means a device, including the repair parts and  
10 replacement parts for the device, that is placed in or worn on the body to artificially  
11 replace a missing portion of the body; to prevent or correct a physical deformity or  
12 malfunction; or to support a weak or deformed portion of the body.

13 **SECTION 30.** 77.51 (12m) of the statutes is created to read:

14 77.51 (12m) (a) "Purchase price" means the total amount of consideration,  
15 including cash, credit, property, and services, for which tangible personal property  
16 or services are sold, leased, or rented, valued in money, whether paid in money or  
17 otherwise, without any deduction for the following:

18 1. The seller's cost of the property sold.

19 2. The cost of materials used, labor or service cost, interest, losses, all costs of  
20 transportation to the seller, all taxes imposed on the seller, and any other expense  
21 of the seller.

22 3. Charges by the seller for any services necessary to complete a sale, not  
23 including delivery and installation charges.

24 4. a. Delivery charges, except as provided in par. (b) 4.

1           b. If a shipment includes property that is subject to tax under this subchapter  
2     and property that is not subject to tax under this subchapter, the amount of the  
3     delivery charge allocated to the property that is subject to tax under this subchapter  
4     based on the total purchase price of the property that is subject to tax under this  
5     subchapter as compared to the total purchase price of all the property or on the total  
6     weight of the property that is subject to tax under this subchapter as compared to the  
7     total weight of all the property.

8           5. Installation charges.

9           6. The value of exempt tangible personal property, if the exempt tangible  
10    personal property is bundled with taxable tangible personal property and sold by the  
11    seller as a single product or piece of merchandise.

12          (b) "Purchase price" does not include:

13          1. Discounts, including cash, terms, or coupons, that are not reimbursed by a  
14          3rd party; that are allowed by a seller; and that are taken by a purchaser on a sale.

15          2. Interest, financing, and carrying charges from credit that is extended on a  
16          sale of personal property or services, if the amount of the interest, financing, or  
17          carrying charges is separately stated on the invoice, bill of sale, or similar document  
18          that the seller gives to the purchaser.

19          3. Any taxes legally imposed directly on the purchaser that are separately  
20          stated on the invoice, bill of sale, or similar document that the seller gives to the  
21          purchaser.

22          4. Delivery charges for direct mail.

23          5. In all transactions in which an article of tangible personal property is traded  
24          toward the purchase of an article of greater value, the amount of the purchase price

1 that represents the amount allowed for the article traded, except that this  
2 subdivision does not apply to any transaction to which subd. 7. or 8. applies.

3 6. If a person who purchases a motor vehicle presents a statement issued under  
4 s. 218.0171 (2) (cq) to the seller at the time of purchase, and the person presents the  
5 statement to the seller within 60 days from the date of receiving a refund under s.  
6 218.0171 (2) (b) 2. b., the trade-in amount specified in the statement issued under  
7 s. 218.0171 (2) (cq), but not to exceed the purchase price from the sale of the motor  
8 vehicle. This subdivision applies only to the first motor vehicle purchased by a  
9 person after receiving a refund under s. 218.0171 (2) (b) 2. b.

10 7. Thirty-five<sup>✓</sup> percent of the purchase price, excluding trade-ins, of a new  
11 mobile home, as defined in s. 340.01 (29), that is a primary housing unit or of a new  
12 mobile home, as defined in s. 340.01 (29), that is transported in 2 unattached sections  
13 if the total size of the combined sections, not including additions and attachments,  
14 is at least 984 square feet measured when the sections are ready for transport. This  
15 subdivision does not apply to a lease or rental.

16 8. At the retailer's option; except that after the retailer chooses an option the  
17 retailer may not use the other option for other sales without the department's written  
18 approval; either 35<sup>✓</sup> percent of the purchase price of a manufactured building, as  
19 defined in s. 101.71 (6), or an amount equal to the purchase price of the manufactured  
20 building minus the cost of materials that become an ingredient or component part  
21 of the building.

22 **SECTION 31.** 77.51 (12p) of the statutes is created to read:

23 77.51 (12p) "Purchaser" means a person to whom a sale of tangible personal  
24 property is made or to whom a service is furnished.

25 **SECTION 32.** 77.51 (13) (o) of the statutes is amended to read:

1           77.51 (13) (o) A person selling ~~medicine~~ drugs for animals to a veterinarian.

2       As used in this paragraph, “animal” includes livestock, pets and poultry.

3           **SECTION 33.** 77.51 (13s) of the statutes is created to read:

4           77.51 (13s) “Retail sale” or “sale at retail” means any sale, lease, or rental for  
5       any purpose other than resale, sublease, or subrent.

6           **SECTION 34.** 77.51 (14) (intro.) of the statutes is amended to read:

7           77.51 (14) (intro.) “Sale”, ~~“sale, lease or rental”, “retail sale”, “sale at retail”, or~~  
8       ~~equivalent terms include~~ includes any ~~one or all~~ of the following: the transfer of the  
9       ownership of, title to, possession of, or enjoyment of tangible personal property or  
10      services for use or consumption but not for resale as tangible personal property or  
11      services and includes:

12          **SECTION 35.** 77.51 (14) (a) of the statutes is amended to read:

13          77.51 (14) (a) Any sale at an auction in respect to tangible personal property  
14      which is sold to a successful bidder. ~~The proceeds from, except~~ the sale of property  
15      sold at auction which is bid in by the seller and on which title does not pass to a new  
16      purchaser ~~shall be deducted from the gross proceeds of the sale and the tax paid only~~  
17      ~~on the net proceeds.~~

18          **SECTION 36.** 77.51 (14) (d) of the statutes is repealed.

19          **SECTION 37.** 77.51 (14) (g) of the statutes is renumbered 77.51 (15a) (b) 4.

20          **SECTION 38.** 77.51 (14) (i) of the statutes is repealed.

21          **SECTION 39.** 77.51 (14) (j) of the statutes is amended to read:

22          77.51 (14) (j) The granting of possession of tangible personal property by a  
23      lessor to a lessee, or to another person at the direction of the lessee. Such a  
24      transaction is deemed a continuing sale in this state ~~by the lessor for the duration~~  
25      ~~of the lease as respects any period of time the leased property is situated in this state,~~



1     ~~irrespective of the time or place of delivery of the property to the lessee or such other~~  
2     ~~person.~~

3           **SECTION 40.** 77.51 (14) (k) of the statutes is repealed.

4           **SECTION 41.** 77.51 (14) (L) of the statutes is repealed.

5           **SECTION 42.** 77.51 (14r) of the statutes is repealed.

6           **SECTION 43.** 77.51 (15) of the statutes is repealed.

7           **SECTION 44.** 77.51 (15a) of the statutes is created to read:

8           **77.51 (15a)** (a) “Sales, lease, or rental for resale, sublease, or subrent” includes  
9     transfers of tangible personal property to a service provider that the service provider  
10    transfers in conjunction with but not incidental to the selling, performing, or  
11    furnishing of any service, and transfers of tangible personal property to a service  
12    provider that the service provider physically transfers in conjunction with the  
13    selling, performing, or furnishing services under s. 77.52 (2) (a) 7., 10., 11., or 20. This  
14    paragraph does not apply to sub. (2).

15          (b) “Sales, lease, or rental for resale, sublease, or subrent” does not include any  
16    of the following:

17          1. The sale of building materials, supplies, and equipment to owners,  
18    contractors, subcontractors, or builders for use in real property construction  
19    activities or the alteration, repair, or improvement of real property, regardless of the  
20    quantity of such materials, supplies, and equipment sold.

21          2. Any sale of tangible personal property to a purchaser even though such  
22    property may be used or consumed by some other person to whom such purchaser  
23    transfers the tangible personal property without valuable consideration, such as  
24    gifts, and advertising specialties distributed gratis apart from the sale of other  
25    tangible personal property or service.

1           3. Transfers of tangible personal property to a service provider that the service  
2 provider transfers in conjunction with the selling, performing, or furnishing of any  
3 service, if the tangible personal property is incidental to the service, unless the  
4 service provider is selling, performing, or furnishing services under s. 77.52 (2) (a)  
5 7., 10., 11., or 20.

6           **SECTION 45.** 77.51 (15b) of the statutes is created to read:

7           77.51 (15b) (a) “Sales price” means the total amount of consideration, including  
8 cash, credit, property, and services, for which tangible personal property or services  
9 are sold, leased, or rented, valued in money, whether received in money or otherwise,  
10 without any deduction for the following:

11           1. The seller’s cost of the property sold.

12           2. The cost of materials used, labor or service cost, interest, losses, all costs of  
13 transportation to the seller, all taxes imposed on the seller, and any other expense  
14 of the seller.

15           3. Charges by the seller for any services necessary to complete a sale, not  
16 including delivery and installation charges.

17           4. a. Delivery charges, except as provided in par. (b) 4.

18           b. If a shipment includes property that is subject to tax under this subchapter  
19 and property that is not subject to tax under this subchapter, the amount of the  
20 delivery charge allocated to the property that is subject to tax under this subchapter  
21 based on the total sales price of the property that is subject to tax under this  
22 subchapter as compared to the total sales price of all the property or on the total  
23 weight of the property that is subject to tax under this subchapter as compared to the  
24 total weight of all the property.

25           5. Installation charges.

1           6. The value of exempt tangible personal property, if the exempt tangible  
2           personal property is bundled with taxable tangible personal property and sold by the  
3           seller as a single product or piece of merchandise.

4           (b) “Sales price” does not include:

5           1. Discounts, including cash, terms, or coupons, that are not reimbursed by a  
6           3rd party; that are allowed by a seller; and that are taken by a purchaser on a sale.

7           2. Interest, financing, and carrying charges from credit that is extended on a  
8           sale of tangible personal property or services, if the amount of the interest, financing,  
9           or carrying charges is separately stated on the invoice, bill of sale, or similar  
10          document that the seller gives to the purchaser.

11          3. Any taxes legally imposed directly on the purchaser that are separately  
12          stated on the invoice, bill of sale, or similar document that the seller gives to the  
13          purchaser.

14          4. Delivery charges for direct mail.

15          5. In all transactions in which an article of tangible personal property is traded  
16          toward the purchase of an article of greater value, the amount of the sales price that  
17          represents the amount allowed for the article traded, except that this subdivision  
18          does not apply to any transaction to which subd. 7. or 8. applies.

19          6. If a person who purchases a motor vehicle presents a statement issued under  
20          s. 218.0171 (2) (cq) to the seller at the time of purchase, and the person presents the  
21          statement to the seller within 60 days from the date of receiving a refund under s.  
22          218.0171 (2) (b) 2. b., the trade-in amount specified in the statement issued under  
23          s. 218.0171 (2) (cq), but not to exceed the sales price from the sale of the motor vehicle.  
24          This subdivision applies only to the first motor vehicle purchased by a person after  
25          receiving a refund under s. 218.0171 (2) (b) 2. b.

1           7. Thirty-five<sup>✓</sup> percent of the sales price, excluding trade-ins, of a new mobile  
2 home, as defined in s. 340.01 (29), that is a primary housing unit or of a new mobile  
3 home, as defined in s. 340.01 (29), that is transported in 2 unattached sections if the  
4 total size of the combined sections, not including additions and attachments, is at  
5 least 984 square feet measured when the sections are ready for transport. This  
6 subdivision does not apply to a lease or rental.

7           8. At the retailer's option; except that after the retailer chooses an option the  
8 retailer may not use the other option for other sales without the department's written  
9 approval; either 35<sup>✓</sup> percent of the sales price of a manufactured building, as defined  
10 in s. 101.71 (6), or an amount equal to the sales price of the manufactured building  
11 minus the cost of materials that become an ingredient or component part of the  
12 building.

13           **SECTION 46.** 77.51 (17) of the statutes is amended to read:

14           77.51 (17) "Seller" includes every person selling, leasing or renting tangible  
15 personal property or selling, performing or furnishing services of a kind the gross  
16 receipts sales price from the sale, lease, rental, performance or furnishing of which  
17 ~~are~~ is required to be included in the measure of the sales tax.

18           **SECTION 47.** 77.51 (17m) of the statutes is repealed and recreated to read:

19           77.51 (17m) "Service address" means any of the following:

20           (a) The location of the telecommunications equipment to which a customer's  
21 telecommunications service is charged and from which the telecommunications  
22 service originates or terminates, regardless of where the telecommunications service  
23 is billed or paid.

24           (b) If the location described under par. (a) is not known by the seller who sells  
25 the telecommunications service, the location where the signal of the

1 telecommunications service originates, as identified by the seller's  
2 telecommunications system or, if the signal is not transmitted by the seller's  
3 telecommunications system, by information that the seller received from the seller's  
4 service provider.

5 (c) If the locations described under pars. (a) and (b) are not known by the seller  
6 who sells the telecommunications service, the customer's place of primary use.

7 **SECTION 48.** 77.51 (17w) of the statutes is created to read:

8 77.51 (17w) "Soft drink" means a beverage that contains less than 0.5 percent  
9 of alcohol and that contains natural or artificial sweeteners. "Soft drink" does not  
10 include a beverage that contains milk or milk products; soy, rice, or similar milk  
11 substitutes; or more than 50 percent vegetable or fruit juice by volume.

12 **SECTION 49.** 77.51 (20) of the statutes is amended to read:

13 77.51 (20) "Tangible personal property" means all tangible personal property  
14 of every kind and description that can be seen, weighed, measured, felt, or touched,  
15 or that is in any other manner perceptible to the senses, and includes electricity,  
16 natural gas, steam and, water, and also leased property affixed to realty if the lessor  
17 has the right to remove the property upon breach or termination of the lease  
18 agreement, unless the lessor of the property is also the lessor of the realty to which  
19 the property is affixed. "Tangible personal property" also includes coins and stamps  
20 of the United States sold or traded as collectors' items above their face value and  
21 computer programs except custom prewritten computer programs software.

22 **SECTION 50.** 77.51 (21) of the statutes is amended to read:

23 77.51 (21) "Taxpayer" means the person who is required to pay, collect, or  
24 account for or who is otherwise directly interested in the taxes imposed by this  
25 subchapter, including a certified service provider.

**SECTION 51.** 77.51 (21p) of the statutes is created to read:

**77.51 (21p)** “Tobacco” means cigarettes, cigars, chewing tobacco, pipe tobacco, and any other item that contains tobacco.

**SECTION 52.** 77.51 (22) (bm) of the statutes is created to read:

**77.51 (22) (bm)** In this subsection, “exercise of any right or power over tangible personal property or taxable services” includes distributing, selecting recipients, determining mailing schedules, or otherwise directing the distribution, dissemination, or disposal of tangible personal property or taxable services, regardless of whether the purchaser of such property or services owns or physically possesses, in this state, the property or services.

**SECTION 53.** 77.52 (1) of the statutes is renumbered 77.52 (1) (a) and amended to read:

**77.52 (1) (a)** For the privilege of selling, licensing, leasing or renting tangible personal property, including accessories, components, attachments, parts, supplies and materials, at retail a tax is imposed upon all retailers at the rate of <sup>plain</sup> ~~5%~~ 5 percent of the ~~gross receipts~~ sales price from the sale, license, lease or rental of tangible personal property, including accessories, components, attachments, parts, supplies and materials, sold, leased or rented at retail in this state.

**SECTION 54.** 77.52 (1) (b) of the statutes is created to read:

**77.52 (1) (b)** For the privilege of selling at retail coins and stamps of the United States that are sold or traded as collectors’ items above their face value, a tax is imposed on all retailers at the rate of <sup>✓</sup> 5 percent of the sales price from the sale of such coins and stamps.

**SECTION 55.** 77.52 (1) (c) of the statutes is created to read:

1           77.52 (1) (c) For the privilege of leasing property that is affixed to real property,  
2           a tax is imposed on all retailers at the rate of 5 percent of the sales price from the lease  
3           of such property, if the lessor has the right to remove the leased property upon breach  
4           or termination of the lease agreement, unless the lessor of the leased property is also  
5           the lessor of the real property to which the leased property is affixed.

6           **SECTION 56.** 77.52 (2) (intro.) of the statutes is amended to read:

7           77.52 (2) (intro.) For the privilege of selling, licensing, performing or furnishing  
8           the services described under par. (a) at retail in this state to consumers or users, a  
9           tax is imposed upon all persons selling, licensing, performing or furnishing the  
10          services at the rate of <sup>plain</sup> ~~5%~~ ~~10 percent~~ of the gross receipts sales price from the sale,  
11          license, performance or furnishing of the services.

12          **SECTION 57.** 77.52 (2) (a) 10. of the statutes is amended to read:

13          77.52 (2) (a) 10. Except for installing or applying tangible personal property  
14          which, when installed or applied, will constitute an addition or capital improvement  
15          of real property, the repair, service, alteration, fitting, cleaning, painting, coating,  
16          towing, inspection, and maintenance of all items of tangible personal property  
17          unless, at the time of such repair, service, alteration, fitting, cleaning, painting,  
18          coating, towing, inspection, or maintenance, a sale in this state of the type of property  
19          repaired, serviced, altered, fitted, cleaned, painted, coated, towed, inspected, or  
20          maintained would have been exempt to the customer from sales taxation under this  
21          subchapter, other than the exempt sale of a motor vehicle or truck body to a  
22          nonresident under s. 77.54 (5) (a) and other than nontaxable sales outside this state  
23          under s. ~~77.51 (14r)~~ 77.522. For purposes of this paragraph, the following items shall  
24          be considered to have retained their character as tangible personal property,  
25          regardless of the extent to which any such item is fastened to, connected with, or built

✓  
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23-11

1 into real property: furnaces, boilers, stoves, ovens, including associated hoods and  
2 exhaust systems, heaters, air conditioners, humidifiers, dehumidifiers,  
3 refrigerators, coolers, freezers, water pumps, water heaters, water conditioners and  
4 softeners, clothes washers, clothes dryers, dishwashers, garbage disposal units,  
5 radios and radio antennas, incinerators, television receivers and antennas, record  
6 players, tape players, jukeboxes, vacuum cleaners, furniture and furnishings,  
7 carpeting and rugs, bathroom fixtures, sinks, awnings, blinds, gas and electric logs,  
8 heat lamps, electronic dust collectors, grills and rotisseries, bar equipment,  
9 intercoms, recreational, sporting, gymnasium and athletic goods and equipment  
10 including by way of illustration but not of limitation bowling alleys, golf practice  
11 equipment, pool tables, punching bags, ski tows, and swimming pools; equipment in  
12 offices, business facilities, schools, and hospitals but not in residential facilities  
13 including personal residences, apartments, long-term care facilities, as defined  
14 under s. 16.009 (1) (em), state institutions, as defined under s. 101.123 (1) (i), Type  
15 1 secured correctional facilities, as defined in s. 938.02 (19), or similar facilities  
16 including, by way of illustration but not of limitation, lamps, chandeliers, and fans,  
17 venetian blinds, canvas awnings, office and business machines, ice and milk  
18 dispensers, beverage-making equipment, vending machines, soda fountains, steam  
19 warmers and tables, compressors, condensing units and evaporative condensers,  
20 pneumatic conveying systems; laundry, dry cleaning, and pressing machines, power  
21 tools, burglar alarm and fire alarm fixtures, electric clocks and electric signs.  
22 “Service” does not include services performed by veterinarians. The tax imposed  
23 under this subsection applies to the repair, service, alteration, fitting, cleaning,  
24 painting, coating, towing, inspection, or maintenance of items listed in this  
25 subdivision, regardless of whether the installation or application of tangible



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77.52(3m)

1 personal property related to the items is an addition to or a capital improvement of  
2 real property, except that the tax imposed under this subsection does not apply to the  
3 original installation or the complete replacement of an item listed in this subdivision,  
4 if such installation or replacement is a real property construction activity under s.  
5 77.51 (2).

6 **SECTION 58.** 77.52 (6) of the statutes is repealed.

7 **SECTION 59.** 77.52 (7) of the statutes is amended to read:

8 77.52 (7) Every person desiring to operate as a seller within this state who  
9 holds a valid certificate under s. 73.03 (50) shall file with the department an  
10 application for a permit for each place of operations. Every application for a permit  
11 shall be made upon a form prescribed by the department and shall set forth the name  
12 under which the applicant intends to operate, the location of the applicant's place of  
13 operations, and the other information that the department requires. The Except as  
14 provided in sub. (7b), the application shall be signed by the owner if a sole proprietor;  
15 in the case of sellers other than sole proprietors, the application shall be signed by  
16 the person authorized to act on behalf of such sellers. A nonprofit organization that  
17 has ~~gross receipts~~ a sales price taxable under s. 77.54 (7m) shall obtain a seller's  
18 permit and pay taxes under this subchapter on all taxable ~~gross receipts~~ sales prices  
19 received after it is required to obtain that permit. If that organization becomes  
20 eligible later for the exemption under s. 77.54 (7m) except for its possession of a  
21 seller's permit, it may surrender that permit.

22 **SECTION 60.** 77.52 (7b) of the statutes is created to read:

23 77.52 (7b) Any person who may register under sub. (7) may designate an agent,  
24 as defined in s. 77.524 (1) (ag), to register with the department under sub. (7), in the  
25 manner prescribed by the department.

1       **SECTION 61.** 77.52 (13) of the statutes is amended to read:

2       **77.52 (13)** For the purpose of the proper administration of this section and to  
3 prevent evasion of the sales tax it shall be presumed that all receipts are subject to  
4 the tax until the contrary is established. The burden of proving that a sale of tangible  
5 personal property or services is not a taxable sale at retail is upon the person who  
6 makes the sale unless that person takes from the purchaser ~~a~~ an electronic or paper  
7 certificate, in a manner prescribed by the department, to the effect that the property  
8 or service is purchased for resale or is otherwise exempt; ~~except that no certificate~~  
9 ~~is required for sales of cattle, sheep, goats, and pigs that are sold at an animal~~  
10 ~~market, as defined in s. 95.68 (1) (ag), and no certificate is required for sales of~~  
11 ~~commodities, as defined in 7 USC 2, that are consigned for sale in a warehouse in or~~  
12 ~~from which the commodity is deliverable on a contract for future delivery subject to~~  
13 ~~the rules of a commodity market regulated by the U.S. commodity futures trading~~  
14 ~~commission if upon the sale the commodity is not removed from the warehouse~~ the  
15 sale of tangible personal property that is exempt under s. 77.54 (7), (7m), (8), (10),  
16 (11), (14), (14b), (15), (17), (20n), (21), (22b), (30), (31), (32), (35), (36), (37), (42), (44),  
17 (45), and (46), except as provided in s. 77.54 (30) (e) and (f).

18       **SECTION 62.** 77.52 (14) (a) (intro.) and 1. and (b) of the statutes are consolidated,  
19 renumbered 77.52 (14) and amended to read:

20       **77.52 (14)** The certificate referred to in sub. (13) relieves the seller from the  
21 burden of proof only if any of the following is true: ~~1. The~~ the certificate is taken in  
22 good faith from a person who is engaged as a seller of tangible personal property or  
23 taxable services and who holds the permit provided for in sub. (9) and who, at the  
24 time of purchasing that the person purchases the tangible personal property or  
25 services, intends to sell it in the regular course of operations or is unable to ascertain

1     ~~at the time of purchase whether the property or service will be sold or will be used~~  
2     ~~for some other purpose. (b). The certificate under sub. (13) shall not relieve the seller~~  
3     ~~of the burden of proof if the sale is sourced to this state under s. 77.522 (1) (b) 1. and~~  
4     ~~the claimed exemption is not provided for under this subchapter or if the seller~~  
5     ~~fraudulently fails to collect sales tax or solicits the purchaser to claim an unlawful~~  
6     ~~exemption. The certificate referred to in sub. (13) shall be signed by and bear the~~  
7     ~~name and address of~~ provide information that identifies the purchaser, and shall  
8     ~~indicate the general character of the tangible personal property or service sold by the~~  
9     ~~purchaser and the basis for the claimed exemption and a paper certificate shall be~~  
10    ~~signed by the purchaser. The certificate shall be in such form as the department~~  
11    ~~prescribes by rule.~~

12         **SECTION 63.** 77.52 (14) (a) 2. of the statutes is repealed.

13         **SECTION 64.** 77.52 (15) of the statutes is amended to read:

14         77.52 (15) If a purchaser who ~~gives a resale certificate~~ purchases tangible  
15    ~~personal property or taxable services without paying a sales tax or use tax on such~~  
16    ~~purchase because such property or services were for resale~~ makes any use of the  
17    ~~property or services~~ other than retention, demonstration or display while holding it  
18    ~~the property or services~~ for sale, lease or rental in the regular course of the  
19    purchaser's operations, the use shall be taxable to the purchaser under s. 77.53 as  
20    of the time ~~that the property is~~ or services are first used by the purchaser, and the  
21    sales ~~purchase~~ price of the property or services to the purchaser shall be the measure  
22    of the tax. ~~Only when there is an unsatisfied use tax liability on this basis because~~  
23    ~~the seller has provided incorrect information about that transaction to the~~  
24    ~~department shall the seller be liable for sales tax with respect to the sale of the~~  
25    ~~property to the purchaser.~~

1           **SECTION 65.** 77.522 of the statutes is created to read:

2           **77.522 Sourcing. (1) GENERAL.** (a) In this section:

3           1. “Direct mail form” means a form for direct mail prescribed by the  
4 department.

5           2. “Multiple-points-of-use exemption form” means the  
6 multiple-points-of-use exemption form, as prescribed by the department.

7           3. “Product” includes tangible personal property, digital goods, and services.

8           4. “Receive” means taking possession of tangible personal property; making  
9 first use of services; or taking possession or making first use of digital goods,  
10 whichever comes first. “Receive” does not include a shipping company taking  
11 possession of tangible personal property on a purchaser’s behalf.

12           5. “Transportation equipment” means all of the following:

13           a. Locomotives and railcars that are used to carry persons or property in  
14 interstate commerce.

15           b. Trucks and truck tractors that have a gross vehicle weight rating of 10,001  
16 pounds or greater, trailers, semitrailers, and passenger buses, if such vehicles are  
17 registered under the International Registration Plan and operated under the  
18 authority of a carrier that is authorized by the federal government to carry persons  
19 or property in interstate commerce.

20           c. Aircraft that is operated by air carriers that are authorized by the federal  
21 government or a foreign authority to carry persons or property in <sup>✓</sup>interstate *or foreign*  
22 commerce.

23           d. Containers that are designed for use on the vehicles described in subd. 5. a.  
24 to c. and component parts attached to or secured on such vehicles.

1           (b) Except as provided in pars. (c) to (d) and subs. (2), (3), and (4), the location  
2 of a sale is determined as follows:

3           1. If a purchaser receives the product at a seller's business location, the sale  
4 occurs at that business location.

5           2. If a purchaser does not receive the product at a seller's business location, the  
6 sale occurs at the location where the purchaser, or the purchaser's designated donee,  
7 receives the product, including the location indicated by the instructions known to  
8 the seller for delivery to the purchaser or the purchaser's designated donee.

9           3. If the location of a sale of a product cannot be determined under subds. 1. and  
10 2., the sale occurs at the purchaser's address as indicated by the seller's business  
11 records, if the records are maintained in the ordinary course of the seller's business  
12 and if using that address to establish the location of a sale is not in bad faith.

13           4. If the location of a sale of a product cannot be determined under subds. 1. to  
14 3., the sale occurs at the purchaser's address as obtained during the consummation  
15 of the sale, including the address indicated on the purchaser's payment instrument,  
16 if no other address is available and if using that address is not in bad faith.

17           5. If the location of a sale of a product cannot be determined under subds. 1. to  
18 4., the location of the sale is determined as follows:

19           a. If the item sold is tangible personal property, the sale occurs at the location  
20 from which the tangible personal property is shipped.

21           b. If the item sold is a digital good, or computer software delivered  
22 electronically, the sale occurs at the location from which the digital good or computer  
23 software was first available for transmission by the seller.

24           c. If a service is sold, the sale occurs at the location from which the service was  
25 provided.

(c) The sale of direct mail occurs at the location from which the direct mail is shipped, if the purchaser does not provide to the seller a direct pay permit, a direct mail form, or other information that indicates the appropriate taxing jurisdiction to which the direct mail is delivered to the ultimate recipients. If the purchaser provides a <sup>or direct pay permit</sup> direct mail form to the seller, the purchaser shall pay or remit, as appropriate, to the department the tax imposed under s. 77.53 (1) on all purchases for which the tax is due and the seller is relieved from liability for collecting such tax.

(d) 1. ~~If the service, digital good, or computer software is delivered electronically,~~ a business purchaser who purchases a service, digital good, or computer software <sup>that is delivered electronically</sup> who does not hold a direct pay permit under s. 77.52 (17m), and <sup>of purchase</sup> who knows at the time ~~that the purchaser purchases such service, good, or software~~ ~~that~~ the service, good, or software will be concurrently available for use in more than one taxing jurisdiction shall provide a multiple-points-of-use exemption form to the seller, in conjunction with the purchase, and shall pay or remit, as appropriate, to the department the tax imposed under s. 77.53 (1) on all purchases for which the tax is due.

2. To apportion the amount of the tax due multiple taxing jurisdictions, a purchaser who provides an exemption form under subd. 1. shall use any reasonable, consistent, and uniform apportionment method supported by the purchaser's business records that exist at the time of the sale.

3. An exemption form provided under subd. 1. shall remain effective for all sales by the seller who received the form to the purchaser who provided the form, unless the purchaser revokes the form in writing and provides such a revocation to the seller.

*that is delivered electronically*

1 4. ~~If the service, digital good, or computer software is delivered electronically,~~  
2 a business purchaser who purchases a service, digital good, or computer software  
3 who holds a direct pay permit under s. 77.52 (17m), and who knows at the time <sup>of purchase</sup> that  
4 ~~the purchaser purchases such service, good or software that~~ the service, good, or  
5 software will be concurrently available for use in more than one taxing jurisdiction  
6 is not required to provide a multiple-points-of-use exemption form to the seller, but  
7 shall collect, pay, or remit, as appropriate, to the department the tax imposed under  
8 s. 77.53 (1) and shall use the apportionment method described under par. (b) to  
9 apportion the tax due multiple taxing jurisdictions.

10 5. A seller who receives a multiple-points-of-use exemption form under this  
11 paragraph is relieved from liability for collecting the tax imposed under s. 77.53 (1)  
12 on purchases related to the multiple-points-of-use exemption form.

13 (2) LEASE OR RENTAL. (a) Except as provided in pars. (b) and (c), with regards  
14 to the first or only payment on the lease or rental, the lease or rental of tangible  
15 personal property occurs at the location determined under sub. (1) (b) <sup>e</sup>1. If the  
16 property is moved from the place where the property was initially delivered, the  
17 subsequent periodic payments on the lease or rental occur at the property's primary  
18 location as indicated by an address for the property that is provided by the lessee and  
19 that is available to the lessor in records that the lessor maintains in the ordinary  
20 course of the lessor's business, if the use of such an address does not constitute bad  
21 faith. The location of a lease or rental as determined under this paragraph shall not  
22 be altered by any intermittent use of the property at different locations.

23 (b) The lease or rental of motor vehicles, <sup>trailers</sup> semitrailers, and aircraft, that are not  
24 transportation equipment, occurs at the primary location of such motor vehicles, <sup>trailers</sup>  
25 semitrailers, or aircraft as indicated by an address for the property that is provided

*except that a lease or rental under this paragraph that requires only one payment occurs at the location determined under sub. (1)(a) b*

1 by the lessee and that is available to the lessor in records that the lessor maintains  
2 in the ordinary course of the lessor's business, if the use of such an address does not  
3 constitute bad faith. The location of a lease or rental as determined under this  
4 paragraph shall not be altered by any intermittent use of the property at different  
5 locations.

6 (c) The lease or rental of transportation equipment occurs at the location  
7 determined under sub. (1) (b) 1.

8 (3) TELECOMMUNICATIONS. (a) In this subsection:

9 1. "Air-to-ground radiotelephone service" means a radio service in which  
10 common carriers are authorized to offer and provide radio telecommunications  
11 service for hire to subscribers in aircraft.

12 2. "Call-by-call basis" means any method of charging for telecommunications  
13 services by which the price of such services is measured by individual calls.

14 3. "Communications channel" means a physical or virtual path of  
15 communications over which signals are transmitted between or among customer  
16 channel termination points.

17 4. "Customer" means a person who enters into a contract with a seller of  
18 telecommunications services or, in any transaction for which the end user is not the  
19 person who entered into a contract with the seller of telecommunications services,  
20 the end user of the telecommunications services. "Customer" does not include a  
21 person who resells telecommunications services or, for mobile telecommunications  
22 services, a serving carrier under an agreement to serve a customer outside the home  
23 service provider's licensed service area.

24 5. "Customer channel termination point" means the location where a customer  
25 inputs or receives communications.

*of tangible personal property,*  
*(d) A license shall be treated as a lease or rental under*  
*this subsection.*



1           6. “End user” means an individual who uses a telecommunications service.

2           7. “Home service provider” means a home service provider under section 124  
3 (5) of P.L. 106–252.

4           8. “Mobile telecommunications service” means a mobile telecommunications  
5 service under 4 USC 116 to 126, as amended by P.L. 106–252.

6           9. “Place of primary use” means place of primary use, as determined under 4  
7 USC 116 to 126, as amended by P.L. 106–252.

8           10. “Postpaid calling service” means a telecommunications service that is  
9 obtained by paying for it on a call-by-call basis using a bankcard, travel card, credit  
10 card, debit card, or similar method, or by charging it to a telephone number that is  
11 not associated with the location where the telecommunications service originates or  
12 terminates. “Postpaid calling service” includes a service that would otherwise be a  
13 prepaid calling service except that the service provided to the customer is not  
14 exclusively a telecommunications service.

15           11. “Prepaid calling service” means the right to access services that are  
16 exclusively telecommunications services, if that right is paid for in advance of  
17 providing such services, requires using an access number or authorization code to  
18 originate calls, and is sold in predetermined units or dollars that decrease with use  
19 in a known amount.

20           12. “Private communication service” means a telecommunications service that  
21 entitles the customer to exclusive or priority use of a communications channel or  
22 group of communications channels, regardless of the manner in which the  
23 communications channel or group of communications channels is connected, and  
24 includes switching capacity, extension lines, stations, and other associated services  
25 that are provided in connection with the use of such channel or channels.

1           13. “Radio service” means a communication service provided by the use of radio,  
2 including radiotelephone, radiotelegraph, paging, and facsimile service.

3           14. “Radiotelegraph service” means transmitting messages from one place to  
4 another by means of radio.

5           15. “Radiotelephone service” means transmitting sound from one place to  
6 another by means of radio.

7           (b) Except as provided in pars. (d) to (g), the sale of a telecommunications  
8 service that is sold on a call-by-call basis occurs in the taxing jurisdiction for sales  
9 and use tax purposes where the call originates and terminates, in the case of a call  
10 that originates and terminates in the same such jurisdiction, or the taxing  
11 jurisdiction for sales and use tax purposes where the call originates or terminates  
12 and where the service address is located.

13           (c) Except as provided in pars. (d) to (g), the sale of a telecommunications  
14 service that is sold on a basis other than a call-by-call basis occurs at the customer’s  
15 place of primary use.

16           (d) The sale of a mobile telecommunications service, except an air-to-ground  
17 radiotelephone service and a prepaid calling service, occurs at the customer’s place  
18 of primary use.

19           (e) The sale of a postpaid calling service occurs at the location where the signal  
20 of the telecommunications service originates, as first identified by the seller’s  
21 telecommunications system or, if the signal is not transmitted by the seller’s  
22 telecommunications system, by information that the seller received from the seller’s  
23 service provider.

24           (f) The sale of a prepaid calling service occurs at the location determined under  
25 sub. (1) (b), except that, if the service is a mobile telecommunications service and the

1 location cannot be determined under sub. (1) (b) 1. to 4., the prepaid calling service  
2 occurs at the location determined under sub. (1) (b) 5. c. or at the location associated  
3 with the mobile telephone number, as determined by the seller.

4 (g) 1. The sale of a private communication service for a separate charge related  
5 to a customer channel termination point occurs at the location of the customer  
6 channel termination point.

7 2. The sale of a private communication service in which all customer channel  
8 termination points are located entirely in one taxing jurisdiction for sales and use  
9 tax purposes occurs in the taxing jurisdiction in which the customer channel  
10 termination points are located.

11 3. If the segments are charged separately, the sale of a private communication  
12 service that represents segments of a communications channel between 2 customer  
13 channel termination points that are located in different taxing jurisdictions for sales  
14 and use tax purposes occurs in an equal percentage in both such jurisdictions.

15 4. If the segments are not charged separately, the sale of a private  
16 communication service for segments of a communications channel that is located in  
17 more than one taxing jurisdiction for sales and use tax purposes occurs in each such  
18 jurisdiction in a percentage determined by dividing the number of customer channel  
19 termination points in that jurisdiction by the number of customer channel  
20 termination points in all jurisdictions where segments of the communications  
21 channel are located.

22 (4) FLORISTS. (a) For purposes of this subsection, “retail florist” means a person  
23 engaged in the business of selling cut flowers, floral arrangements, and potted plants  
24 and who prepares such flowers, floral arrangements, and potted plants. “Retail

1 florist” does not include a person who sells cut flowers, floral arrangements, and  
2 potted plants primarily by mail or via the Internet.

3 (b) The sale of tangible personal property by a retail florist who takes an order  
4 from a purchaser occurs at the location where the retail florist takes the order, if the  
5 retail florist forwards the order to another retail florist who is at a location other than  
6 the location of the florist who takes the order and who transfers the tangible personal  
7 property to a person identified by the purchaser.

8 (c) This subsection does not apply to sales occurring on or after January 1, 2006.

9 **SECTION 66.** 77.523 (title) of the statutes is repealed.

10 **SECTION 67.** 77.523 of the statutes is renumbered 77.59 (9p) (a) and amended  
11 to read:

12 **77.59 (9p) (a)** If a customer purchases a service that is subject to 4 USC 116  
13 to 126, as amended by P.L. 106–252, and if the customer believes that the amount  
14 of the tax assessed for the service under this subchapter or the place of primary use  
15 or taxing jurisdiction assigned to the service is erroneous, the customer may request  
16 that the service provider correct the alleged error by sending a written notice to the  
17 service provider. The notice shall include a description of the alleged error, the street  
18 address for the customer’s place of primary use of the service, the account name and  
19 number of the service for which the customer seeks a correction, and any other  
20 information that the service provider reasonably requires to process the request.  
21 Within 60 days from the date that a service provider receives a request under this  
22 section paragraph, the service provider shall review its records to determine the  
23 customer’s taxing jurisdiction. If the review indicates that there is no error as  
24 alleged, the service provider shall explain the findings of the review in writing to the  
25 customer. If the review indicates that there is an error as alleged, the service

1 provider shall correct the error and shall refund or credit the amount of any tax  
2 collected erroneously, along with the related interest, as a result of the error from the  
3 customer in the previous 48 months, consistent with s. 77.59 (4). A customer may  
4 take no other action, or commence any action, to correct an alleged error in the  
5 amount of the tax assessed under this subchapter on a service that is subject to 4 USC  
6 116 to 126, as amended by P.L. 106–252, or to correct an alleged error in the assigned  
7 place of primary use or taxing jurisdiction, unless the customer has exhausted his  
8 or her remedies under this section paragraph.

9 **SECTION 68.** 77.524 (1) (a) of the statutes is renumbered 77.524 (1) (am).

10 **SECTION 69.** 77.524 (1) (ag) of the statutes is created to read:

11 77.524 (1) (ag) “Agent” means a person appointed by a seller to represent the  
12 seller before the states that are signatories to the agreement, as defined in 77.65 (2)  
13 (a).

14 **SECTION 70.** 77.524 (1) (b) of the statutes is renumbered 77.51 (1g).

15 **SECTION 71.** 77.53 (1) of the statutes is amended to read:

16 77.53 (1) Except as provided in sub. (1m), an excise tax is levied and imposed  
17 on the use or consumption in this state of coins, stamps, leased property, and taxable  
18 services under s. 77.52 purchased from any retailer, at the rate of 5% <sup>plain</sup> ~~5 percent~~ of the  
19 sales purchase price of those such coins, stamps, leased property, and services; on the  
20 storage, use or other consumption in this state of tangible personal property  
21 purchased from any retailer, at the rate of 5% <sup>plain</sup> ~~5 percent~~ of the sales purchase price  
22 of that property; and on the storage, use or other consumption of tangible personal  
23 property manufactured, processed or otherwise altered, in or outside this state, by  
24 the person who stores, uses or consumes it, from material purchased from any  
25 retailer, at the rate of 5% <sup>plain</sup> ~~5 percent~~ of the sales purchase price of that material.

1           **SECTION 72.** 77.53 (3) of the statutes is amended to read:

2           **77.53 (3)** Every retailer engaged in business in this state and making sales of  
3     tangible personal property or taxable services ~~for delivery into this state or with~~  
4     ~~knowledge directly or indirectly that the property or service is intended for storage,~~  
5     ~~use or other consumption in~~ that are sourced to this state under s. 77.522, shall, at  
6     the time of making the sales ~~or, if the storage, use or other consumption of the~~  
7     ~~tangible personal property or taxable service is not then taxable under this section,~~  
8     ~~at the time the storage, use or other consumption becomes taxable,~~ collect the tax  
9     from the purchaser and give to the purchaser a receipt in the manner and form  
10    prescribed by the department.

11          **SECTION 73.** 77.53 (4) of the statutes is repealed.

12          **SECTION 74.** 77.53 (9) of the statutes is amended to read:

13          **77.53 (9)** Every retailer selling tangible personal property or taxable services  
14     for storage, use or other consumption in this state shall register with the department  
15     and obtain a certificate under s. 73.03 (50) and give the name and address of all  
16     agents operating in this state, the location of all distribution or sales houses or offices  
17     or other places of business in this state, the standard industrial code classification  
18     of each place of business in this state and the other information that the department  
19     requires. Any person who may register under this subsection may designate an  
20     agent, as defined in s. 77.524 (1) (ag), to register with the department under this  
21     subsection, in the manner prescribed by the department.

22          **SECTION 75.** 77.53 (9m) of the statutes is renumbered 77.53 (9m) (a).

23          **SECTION 76.** 77.53 (9m) (b) of the statutes is created to read:

1           77.53 (9m) (b) Any person who may register under par. (a) may designate an  
2           agent, as defined in s. 77.524 (1) (ag), to register with the department under par. (a),  
3           in the manner prescribed by the department.

4           **SECTION 77.** 77.53 (9m) (c) of the statutes is created to read:

5           77.53 (9m) (c) The registration under par. (a) by a person who is not otherwise  
6           required to collect any tax imposed by this subchapter shall not be used as a factor  
7           in determining whether the seller has nexus with this state for any tax at any time.

8           **SECTION 78.** 77.53 (10) of the statutes is amended to read:

9           77.53 (10) For the purpose of the proper administration of this section and to  
10          prevent evasion of the use tax and the duty to collect the use tax, it is presumed that  
11          tangible personal property or taxable services sold by any person for delivery in this  
12          state is sold for storage, use, or other consumption in this state until the contrary is  
13          established. The burden of proving the contrary is upon the person who makes the  
14          sale unless that person takes from the purchaser ~~a~~ an electronic or paper certificate,  
15          in a manner prescribed by department, to the effect that the property or taxable  
16          service is purchased for resale, or otherwise exempt from the tax; ~~except that no~~  
17          certificate is required for sales of cattle, sheep, goats, and pigs that are sold at an  
18          animal market, as defined in s. 95.68 (1) (ag), and no certificate is required for sales  
19          of commodities, as defined in 7 USC 2, that are consigned for sale in a warehouse in  
20          or from which the commodity is deliverable on a contract for future delivery subject  
21          to the rules of a commodity market regulated by the U.S. commodity futures trading  
22          commission if upon the sale the commodity is not removed from the warehouse the  
23          sale of tangible personal property that is exempt under s. 77.54 (7), (7m), (8), (10),  
24          (11), (14), (14b), (15), (17), (20n), (21), (22b), (30), (31), (32), (35), (36), (37), (42), (44),  
25          (45), and (46), except as provided in s. 77.54 (30) (e) and (f).